

To: ARLO News[]
Cc: []
From: CN=Mary Grady/OU=DC/O=USEPA/C=US
Sent: Fri 12/7/2012 2:27:29 PM
Subject: Air & Radiation Law News for December 7, 2012

[Westlaw Document 15 07 38.doc](#)

[Talks Expected to Resume on Refinery Greenhouse Gas Rule Deadline](#)

[More »](#)

[White House, EPA Prepare for Sequestration; 8.2 Percent Cut Possible](#)

[More »](#)

[Draft Texts for Climate Deals Unveiled as U.N. Talks Near End](#)

[More »](#)

[California Court Finds Review of San Diego Transport Plan Flawed](#)

[More »](#)

[Updated Vapor Intrusion Guidance Said to Be Complex, Variable](#)

[More »](#)

[Aide Says House to Work on Energy Efficiency Bill Next Year](#)

[More »](#)

[More »](#)

[More »](#)

[A-6](#)

[A-16](#)

[More »](#)

[A-16](#)

[InsideEPA.com - Latest News](#)

[EPA Fights Deadline Suit Over States' Plans To Meet 2008 Ozone Standard](#)

[Refiners Raise Cost Concerns In Bid To Prevent EPA Tightening Air Rule](#)

[Fears Of RFS Credit 'Confusion' Prompt EPA To Withdraw Heating Oil Rule](#)

[EPA Touts Hybrid, EV Benefits](#)

[Fight Over PM Test Suit Dismissal](#)

[Sierra Club Resists LNG Export Finding](#)

[Paper Sector Seeks Air Rule Fixes](#)

[Hotspot](#)

[ClimateWire](#)

[reported demand](#)

[summary](#)

[Greenwire](#)

[Read the full edition](#)

[1. WILDFIRES: For much of U.S., fire hazard lingers as drought persists](#)

[2. CARBON CAPTURE: Fires, urbanization to redraw carbon map of West](#)

[3. ARCTIC: Soot from burning tundra may be speeding up Greenland's ice melt](#)

[4. SCIENCE: Scholars duel over the entry of a man-made era](#)

[5. MARKETS: Calif. overstated demand for its inaugural cap-and-trade auction](#)

[6. SCIENCE: Researchers worry that Obama admin's travel restrictions may curb discoveries](#)

[7. NEGOTIATIONS: After an all-nighter, Doha talks veer toward an uncertain end](#)

[8. CITIES: Communities hunt for cash to upgrade local flood-control systems](#)

[9. ENERGY EFFICIENCY: Video companies agree to replace an electricity hog, saving taxpayers \\$1.5B](#)

[10. NATIONS: India protects its farmers' interests at Doha](#)

[11. MEDIA: Why TV weathercasters deny climate change](#)

[12. CAP AND TRADE: NASA's Hansen criticizes Calif. emissions-reduction system](#)

[13. BUSINESS: Climate change aid going to corporations, environmental organization says](#)

[Read the full edition](#)

[1. LNG: Export 'winners' go beyond U.S. borders](#)

[2. LOBBYING: Oil and gas industry needs to sell itself better -- advocates](#)

[3. OIL SHALE: Colo. county once again at odds with BLM development plan](#)

[4. HYDRAULIC FRACTURING: Pavillion driller blasts EPA contamination findings](#)

- [5. ADVOCACY: 100 groups band together to ban fracking and drilling](#)
 - [6. BUSINESS: Better-than-expected results in Niobrara Shale boost Noble Energy's outlook](#)
 - [7. TECHNOLOGY: BP plans world's largest commercial supercomputer to find oil and gas](#)
 - [8. PEOPLE: Shale industry group announces 2013 board members](#)
 - [9. NATURAL GAS: River agency rejects call to consider pipelines' broad effects](#)
 - [10. PEOPLE: Top oil field services provider promotes 2 execs](#)
 - [11. ENERGY MARKETS: In a first for EIA, Brent favored over U.S. oil benchmarks](#)
 - [12. COLORADO: County sets rules for behavior at hearings after fracking fracacs](#)
 - [13. CHINA: State energy firms win blocks in second shale gas auction](#)
 - [14. ARCTIC DRILLING: Company could test new rules from Canada energy board](#)
- [Robert R. Nordhaus](#)
[\(embedded image\)](#)
[\(embedded image\)](#)
[\(embedded image\)](#)
[\(embedded image\)](#)
[\(embedded image\)](#)

AIR & RADIATION LAW NEWS FOR DECEMBER 7, 2012

HIGHLIGHTS

Talks Expected to Resume on Refinery Greenhouse Gas Rule Deadline

Environmental groups anticipate reopening discussions with EPA in January on a new deadline to propose the long overdue greenhouse gas limits for petroleum refineries. EPA is nearly a year overdue to propose new source performance standards for greenhouse gas emissions from petroleum refineries, and environmental groups say they have not discussed the rule with the agency in several months. ... More »

White House, EPA Prepare for Sequestration; 8.2 Percent Cut Possible

The White House requests federal agencies, including EPA, to provide additional information and analysis on agency spending in advance of automatic spending cuts scheduled to go into effect Jan. 2. R. Steven Brown, executive director for the Environmental Council of the States, tells BNA that EPA is planning for an across-the-board 8.2 percent spending cut to all of its discretionary accounts if sequestration goes into effect. ... More »

Draft Texts for Climate Deals Unveiled as U.N. Talks Near End

With one day remaining in U.N. climate talks, negotiators continue to sort through the latest draft texts needed to extend Kyoto Protocol commitments, but make only incremental progress on language to advance a broader 2020 global pact. A third negotiating track launched in 2007 in Bali, Indonesia—which the United States argues is no longer needed given that all countries are now working together toward the 2020 accord—"is a procedural mess," according to one U.S. observer. ... More »

California Court Finds Review of San Diego Transport Plan Flawed

A California Superior Court rules that the San Diego Association of Governments did not adequately consider the impact of greenhouse gas emissions in developing its combined regional transportation plan and sustainable communities strategy. The court says the case is the first to challenge a regional transportation plan/sustainable communities strategy plan under the California Communities and Climate Protection Act (S.B. 375), which empowered the state to set emissions reduction targets for all metropolitan planning organizations. ... More »

Updated Vapor Intrusion Guidance Said to Be Complex, Variable

Upcoming EPA vapor intrusion guidance will be considerably more complex and variable than draft guidance the agency issued in 2002, a lawyer tells a webinar sponsored by BNA. The new guidance will be much more site-specific, moving away from the tiering approach of the 2002 draft, Larry Schnapf of Schnapf LLC says. It also will emphasize the use of empirical data rather than screening with a model, he says. ... More »

Aide Says House to Work on Energy Efficiency Bill Next Year

Members of the House Energy and Commerce Committee are expected to draft bipartisan energy efficiency legislation next year, a Republican committee aide says. Citing energy efficiency as an area where both Republicans and Democrats could find common ground, Patrick Currier, counsel with the committee's Energy and Power Subcommittee, tells an energy forum that committee members will likely work on the legislation with their counterparts in the Democratic-controlled Senate. ... [More »](#)

ALSO IN THE NEWS

ENERGY: A bill that would weaken some appliance energy conservation standards but promote development of energy-efficient technology is approved by the Senate and goes to President Obama. ... [More »](#)

CLIMATE CHANGE: Local governments are adapting to climate change impacts by improving stormwater systems, planting trees to lower temperatures, and undertaking other efforts, local government representatives say. ... [More »](#)

CLIMATE CHANGE: New York mayor sets plans to assess preparedness, resilience after storm A-6

CLIMATE CHANGE: Vitter introduces anti-carbon tax resolution A-16

AIR POLLUTION: The California Air Resources Board adopts a resolution declaring San Diego County has attained the 1997 national eight-hour standard for ground-level ozone. ... [More »](#)

FUEL EFFICIENCY: EPA, Transportation Department release fuel economy guide A-16

EPA Fights Deadline Suit Over States' Plans To Meet 2008 Ozone Standard

EPA is fighting environmentalists' suit seeking court-ordered deadlines for states to submit plans for meeting the agency's 2008 ozone national ambient air quality standard (NAAQS), with the agency claiming the Clean Air Act does not require it to set a timetable for states to submit the plans for approval.

Refiners Raise Cost Concerns In Bid To Prevent EPA Tightening Air Rule

Petroleum refiners are holding a series of meetings with EPA and White House officials to urge the agency against imposing stringent new emissions controls on the sector in pending proposed air toxics rules, saying EPA's tentative plans for the rule could set unnecessarily strict standards that create significant costs for the industry.

Fears Of RFS Credit 'Confusion' Prompt EPA To Withdraw Heating Oil Rule

EPA is withdrawing parts of a final direct rule to amend the definition of heating oil under the renewable fuel standard (RFS) after the biodiesel industry and Midwest soybean processors warned the changes may create "confusion" about companies' ability to generate RFS compliance credits for biodiesel blends used as heating oil.

Latest Blogs

EPA Touts Hybrid, EV Benefits

EPA in its just-released 2013 fuel economy vehicle guide is touting the greenhouse gas (GHG) reductions and improved fuel economy of hybrid and electric vehicles . . .

Fight Over PM Test Suit Dismissal

A free-market group is fighting EPA's request for a federal district court to dismiss the organization's suit that seeks to bar the agency's tests exposing . . .

Sierra Club Resists LNG Export Finding

A long-awaited macroeconomic analysis sought by the Department of Energy (DOE) has found that exports of liquefied natural gas (LNG) will likely provide "net economic . . .

Paper Sector Seeks Air Rule Fixes

Pulp and paper industry sources say they are working with EPA to try and scrap language from the agency's air toxics rule for the sector . . .

CALIFORNIA:

Regulators overstated demand for cap-trade allowances in first auction

Debra Kahn, E&E reporter

Published: Thursday, December 6, 2012

California regulators today lowered their estimate of the demand for greenhouse gas allowances in last month's inaugural cap-and-trade auction.

The number of qualified bids for 2013 allowances exceeded the number put up for auction by only about 6 percent, rather than 210 percent, as the state had reported last month for all bids.

Buyers snapped up more than 23 million tons of carbon dioxide permits that businesses could buy to cover their 2013 emissions, resulting in a price of \$10.09 per ton for those permits in the Nov. 14 auction. Demand was less for the 2015 allowances, with 14 percent of those sold at \$10 per ton (ClimateWire, Nov. 20). The trading system runs through 2020, with the goal of helping lower statewide emissions to 1990 levels. It applies to about 600 industrial facilities throughout the state.

But the statistics that California Air Resources Board officials released the week after the auction included only the total number of bids, including ones that were above the amount permitted for each company to hold or otherwise flawed according to the rules of the auction. That resulted in a reported demand of 3.1 times the number of 2013 allowances available.

Today, officials released an updated summary showing that qualified bids exceeded demand by a factor of 1.06.

"For the November 14th auction, a very small number of auction participants exceeded their purchase limit, holding limit, or bid guarantee, which led to the higher ratio for submitted bids," agency staff said.

It's unclear how the announcement will affect the perceived value of the allowances. Trading of allowance futures picked up immediately after the auction, with 100,000 tons of 2013 allowances for December 2013 delivery changing hands Nov. 16, according to the IntercontinentalExchange. Since then, prices have gone from \$12 per ton to a high of \$13.13 per ton on Monday, in part reflecting an announcement earlier this week that next year's auctions will start at \$10.71 per ton to account for inflation, one market expert said.

"I think there's going to be some people who probably think that ARB at least reacted quickly to analyzing the data based on the concerns that were expressed," said Samantha Katz, managing director of BGC Brokerage. "Then there are going to be people who think they should have gotten this right from the get-go."

URANIUM:

Wyo., enviros at odds over new mine, sage grouse protections

Manuel Quinones, E&E reporter

Published: Thursday, December 6, 2012

The state of Wyoming is intervening in federal litigation that could become a key case in the fight between mining companies and conservationists over sage grouse protections.

At issue is a lawsuit filed by the Laramie-based Biodiversity Conservation Alliance and the Western Mining Action Project last month challenging Bureau of Land Management approval of Ur-Energy Inc.'s Lost Creek uranium mining project in Sweetwater County, Wyo.

Wyoming Attorney General Greg Phillips (D), at the urging of Gov. Matt Mead (R), filed papers this week to advocate for the project, which also needed state permits.

"Wyoming has put a lot of resources into making sure this mine operates in a safe and responsible manner," Mead said in a statement yesterday. "This project provides energy for the nation, jobs for Wyoming and revenue to local, state and federal governments."

The Lost Creek mine, which includes a portion of state land, will create 160 jobs and generate more than \$19 million in severance taxes, Mead said in a news release. The company broke ground in October.

Ur-Energy CEO Wayne Heili said, "Thanks to the advanced preparation of the Ur-Energy team, we have been able to initiate construction without delay following receipt of our final regulatory approval."

The groups filed their lawsuit last month, hoping to halt construction. They say BLM failed to take the required "hard look" at wildlife impacts and potential pollution.

The project is a so-called in-situ recovery or in-situ leach site. The process generally involves pumping water, oxygen and sodium bicarbonate to free uranium underground and then sucking it to the surface.

"In the case of Lost Creek, [BLM] has approved a project inside a sage grouse core area that violates the most important protections that are supposed to be applied there," said Erik Molvar, biologist and head of the Biodiversity Conservation Alliance. The groups say regulators approved too many wells and too much road construction for Lost Creek, which will jeopardize sage grouse habitats.

"This is the first major test to see whether the core area protections that have been drawn up in state and federal policies will have any on-the-ground benefit for the sage grouse," Molvar said.

Separately, Ur-Energy said BLM had accepted a request to review its record of decision but refused to block construction. A preliminary injunction motion against the project is pending in U.S. District Court in Wyoming.

Industry groups have complained about the legality of federal sage grouse protection plans (Greenwire, March 26). And Mead believes the mine complies with the state's Greater Sage-Grouse Core Area Protection Executive Order.

"Work on permitting this project started over five years ago and I believe state agencies and Ur-Energy have done sound work to

protect Wyoming's water and wildlife," Mead said. "This includes mitigating impacts to sage-grouse."

Other projects

Uranium prices have remained sluggish for some time, currently standing at around \$42 per pound, according to Ux Consulting Co. The market situation even prompted mining giant BHP Billiton Ltd. to reduce focus on uranium extraction.

Still, producers in the United States are predicting growth in the market. Several other uranium mining projects are moving forward and prompting environmental concerns.

Uranium Energy Corp. announced yesterday that it had received all necessary permits for its Goliad in-situ recovery project in south Texas, including approvals from the Texas Commission on Environmental Quality and U.S. EPA.

The Nuclear Regulatory Commission last month issued a draft environmental impact statement for Powertech Uranium Corp.'s Dewey-Burdock project in South Dakota. NRC is also considering a license for Strata Energy Inc.'s Ross in-situ mine project in Crook County, Wyo.

BLM, also last month, released a draft environmental impact statement for Cameco Corp.'s Gas Hills in-situ project in Wyoming's Fremont and Natrona counties.

And in Virginia, state lawmakers are poised to debate legislation to lift a uranium mining ban with the backing of groups like the Heritage Foundation and the Heartland Institute. State Sen. John Watkins (R) has already announced his intention to push for consideration.

ClimateWire -- Fri., December 7, 2012 -- Read the full edition

1. WILDFIRES: For much of U.S., fire hazard lingers as drought persists

An unusually late fire season may bring coal to more than a few Christmases this year. Ongoing drought conditions across much of the West, Midwest and South have left ample fuel for ignition, keeping firefighters on edge and raising alerts in a number of states. The year appears poised to claim third place in the annals of worst fire seasons on record, following burns totaling 9.8 million acres in 2006 and 9.3 million acres in 2007.

2. CARBON CAPTURE: Fires, urbanization to redraw carbon map of West

As fires become more frequent and less controllable, they will impair the West's ability to absorb carbon and slow climate change, concludes a new analysis of the western United States' landscape.

TODAY'S STORIES

3. ARCTIC: Soot from burning tundra may be speeding up Greenland's ice melt

4. SCIENCE: Scholars duel over the entry of a man-made era

5. MARKETS: Calif. overstated demand for its inaugural cap-and-trade auction

6. SCIENCE: Researchers worry that Obama admin's travel restrictions may curb discoveries

7. NEGOTIATIONS: After an all-nighter, Doha talks veer toward an uncertain end

8. CITIES: Communities hunt for cash to upgrade local flood-control systems

9. ENERGY EFFICIENCY: Video companies agree to replace an electricity hog, saving taxpayers \$1.5B

10. NATIONS: India protects its farmers' interests at Doha

11. MEDIA: Why TV weathercasters deny climate change

12. CAP AND TRADE: NASA's Hansen criticizes Calif. emissions-reduction system

13. BUSINESS: Climate change aid going to corporations, environmental organization says

EnergyWire -- Fri., December 7, 2012 -- Read the full edition

1. LNG: Export 'winners' go beyond U.S. borders

Natural gas analysts responded positively yesterday to the Department of Energy's release of a report that underscored the economic benefits of exporting liquefied natural gas, highlighting some of the broad swath of export, production, manufacturing and transport companies poised to benefit from an expanded industry.

2. LOBBYING: Oil and gas industry needs to sell itself better -- advocates

LONG BEACH, CALIF. -- Oil and gas companies must launch an aggressive public relations campaign to counteract the efforts of groups opposing exploration, an industry lobbyist argued this week.

THIS MORNING'S STORIES

3. OIL SHALE: Colo. county once again at odds with BLM development plan

4. HYDRAULIC FRACTURING: Pavillion driller blasts EPA contamination findings

5. ADVOCACY: 100 groups band together to ban fracking and drilling

6. BUSINESS: Better-than-expected results in Niobrara Shale boost Noble Energy's outlook

7. TECHNOLOGY: BP plans world's largest commercial supercomputer to find oil and gas

8. PEOPLE: Shale industry group announces 2013 board members

9. NATURAL GAS: River agency rejects call to consider pipelines' broad effects

10. PEOPLE: Top oil field services provider promotes 2 execs

11. ENERGY MARKETS: In a first for EIA, Brent favored over U.S. oil benchmarks

12. COLORADO: County sets rules for behavior at hearings after fracking fracas

13. CHINA: State energy firms win blocks in second shale gas auction

14. ARCTIC DRILLING: Company could test new rules from Canada energy board

NEW ARTICLE

33 Energy L.J. 365

Energy Law Journal 2012

MODERNIZING THE CLEAN AIR ACT: IS THERE LIFE AFTER 40?

Robert R. Nordhaus

Synopsis: The Clean Air Act (CAA or “the Act”), as it was fashioned in 1970 and revised in 1977 and 1990, was a major environmental law milestone that became the model, in whole or part, for virtually every subsequent federal environmental statute. It has clearly reduced emissions and improved air quality. There are, however, a number of fundamental design flaws and structural limitations in the original statutory scheme, its subsequent amendments, and its administration that have limited the CAA's effectiveness in protecting public health, driven up compliance costs, and spawned political controversy and litigation. These design issues include the “grandfathering” policies, over-reliance on state implementation plans to carry out much of the regulatory system, the Act's interstate transport provisions and the “layering” of overlapping regulatory requirements on the same source. This article reviews these design issues and suggests two alternatives that could make the regulatory system more effective, reduce the extent to which regulatory outcomes are dependent on litigation, and increase the cost-effectiveness of air quality regulation. The first alternative would refine and streamline the Act's multiple existing regulatory programs; the second would fundamentally restructure the statute to eliminate a number of overlapping or redundant regulatory requirements, clarify the respective roles of the EPA and the states, expand emissions trading authority, and accommodate greenhouse gas regulation.

Brought to you by the Office of General Counsel Law Library